

### REMARKS

No changes have been made to the claims.

On April 22, 2009, the Applicants conducted a telephone interview with Examiner Jackson and the Examiner indicated that the non-final rejection mailed March 18, 2009, was improper because none of the cited pieces of prior art teach free motion of two hinges perpendicular to one another as found in claim 9. The Examiner stated in the Telephone Interview Summary that this rejection would be withdrawn and an updated search will be performed. This Response is being filed to request such a withdrawal.

The Examiner rejects claims 9-12, 15, and 16 under 35 U.S.C. §103(a) as being obvious to the teaching of United States Patent No. 6,027,466 to Diefenbacher, et al. (hereinafter the "Diefenbacher patent") in view of the teaching of United States Patent Application Publication No. 2002/0133108 to Jagodzinski (hereinafter the "Jagodzinski application"). The Diefenbacher patent is directed to an adjustable orthopedic device which, as illustrated in Fig. 1, has a joint 1 that provides rotary motion along a flexion/extension plane to connectors 4, 5, respectively. Additionally, as illustrated in Figs. 2-4, and as discussed in column 2, line 61 through column 3, line 15, a rocker arm 16 pivots about pin 33 and provides for angular adjustment in the plane of abduction/adduction 10 that is substantially orthogonal to the flexion plane. This is achieved through a threaded cylinder 20 (Fig. 5) with a socket head 34 that is threaded into passage 11. The cylinder 20 is held captive between the body and the backing plate and accessible through rotation through slot 35 for an adjustment as shown in Fig. 3. However, as stated in column 3, lines 11-14, the abduction angle is continuously adjustable and whatever angle is set by cylinder 20 remains fixed until cylinder 20 is readjusted.

On the other hand, the orthopedic device, as found in claim 1, comprises two hinges and each hinge has a pivot axis and pivots freely about that axis. This is not the case in the device disclosed in the Diefenbacher patent. At least one hinge in the Diefenbacher patent is adjustable to a fixed position through rotation of the cylinder 20. Therefore, while the Diefenbacher patent provides a range of adjustments for angular positioning, it does not


permit each of two hinges to pivot freely about an axis.

Additionally, the Jagodzinski application is directed to a device for stabilizing a joint and, once again, neither teaches nor suggests two hinges, wherein each hinge has a pivot axis and pivots freely about that axis. For this reason claim 9 is believed to be patentably distinct over the prior art of record and by their dependence upon what is believed to be patentably distinct independent claim 9, dependent claims 10-12, and 15 are themselves believed to be patentably distinct over the prior art of record. Claim 16, on the other hand, has limitations similar to independent claim 9 and, for these same reasons, claim 9 is believed to be patentably distinct over the prior art of record, so too is independent claim 16.

On page 4 of the Office Action the Examiner rejects claim 13 under 35 U.S.C. §103(a) as being obvious from the teaching of the Diefenbacher patent and the Jagodzinski application, and further in view of the teaching of United States Patent No. 6,201,511 to Johnson, et al. By way of its dependence upon what is believed to be patentably distinct independent claim 9, dependent claim 13 is itself believed to be patentably distinct over the prior art of record.

The Applicants, once again, thank the Examiner for the telephone interview of April 28, 2009, and look forward to the current rejection being withdrawn and the currently pending claims being allowed.

Respectfully submitted,  
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